IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPEAL NO.914 OF 1988

1. Shamrao Bhiku Yevale.
2. Baburao Bhiku Yevale.
3. Ramdas Shamrao Yevale.
4. Keshav Baburao Yevale.
5. Bhanudas Baburao Yevale.
All residing at Bhogaon,
Taluka Wai, District-Satara. ..Appellants.

V/s.

1. The State of Maharashtra.
2. Smt.Kusum Ashok Yevale. .Respondents.

WITH

CRIMINAL APPEAL NO.101 OF 1988

The State of Maharashtra ..Appellant.

V/s.

1. Shamrao Bhiku Yevale.
2. Baburao Bhiku Yevale.
3. Ramdas Shamrao Yevale.
4. Keshav Baburao Yevale.
5. Bhanudas Baburao Yevale.
All residing at Bhogaon,
Taluka Wai, District-Satara. ..Respondents.

Mr. M.S.Mohite i/b R.S.Mohite appellants/accused.

Mr.V.B.Konde-Deshmukh, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 7, 2006.

ORAL JUDGMENT :

1. This Judgment will dispose of both the cross appeals. Criminal Appeal No.914 of 1988 is preferred by the accused for setting aside the order of

conviction and sentence, whereas Criminal Appeal No.101 of 1988 is preferred by the State for enhancement of sentence. Both these appeals emanate from the Judgment and Order passed by the Additional Sessions Judge, Satara dated October 9, 1987 in Sessions Case No.84 of 1984. The accused were prosecuted for the offence punishable under section 302,342, 201 r/w 34 of the I.P.Code.

2. The deceased and the accused are related to each other. The accused No.1 Shamrao Bhiku Yevale and accused No.2 Baburao Bhiku Yevale are the real brothers. Accused No.3 Ramdas Shamrao Yevale is the son of accused No.1 Shamrao. Accused No.4 Keshave Baburao Yevale and Accused No.5 Bhanudas Baburao Yevale are the sons of accused No.2 Baburao. The deceased Ashok was the third son of accused No.2 Baburao. All the accused are residents of village Bhogaon, Taluka Wai, District Satara. The complainant Kusum P.W.16 is the wife of deceased Ashok. The incident in question is alleged to have taken place on 13th April, 1984 at about 6 p.m. at village Bhogaon. It is the prosecution case that Ashok, his wife Kusum P.W.16 and her mother-in-law were the only persons present in the house. All of them took food at about 12.00 noon, whereafter, Ashok

left the house to go to Pandewadi alongwith his son Vijay and Jitendra, Son of Sunanda to give fruits of Shevga to his sister Mangal P.W.7. Sunanda P.W.6 is the cousin sister of Ashok. Ashok returned back at about 4.00 to 4.30 p.m.. Sunanda P.W.6 made enquiries with Ashok as to why he had taken away her son to village Pandewadi. Sunanda then abused Ashok. Thereafter, Ashok went inside the house and consumed liquor and came out and demanded match box from his wife Kusum P.W.16. As Ashok was threatening that he would set the stack lying in the court yard on fire and ruin all of them, Kusum P.W.16 did not give match-box to him. It is alleged that Ashok himself went inside the house and came out with the match box. He thereafter, went to the Western rear court yard and set the stack on fire. Chandrabhaga wife of the accused No.1 Shamrao shouted loudly. The inmates of the house and villagers arrived on the spot and extinguished the fire. On account of this incident all the persons in the house were angry and enraged. It is alleged that in the hit of moment, accused Nos.1 to 5 asked Ashok as to why he has set the stack on fire. They enquired whether he intended to kill them and burn them. Thereafter, they started abusing Ashok. Ashok in turn, also abused the accused. This episode allegedly took place at about 6 p.m.. It is

alleged that altercation took place. Then all the five accused started pulling and pushing Ashok to fall on the ground. Thereafter, they dragged Ashok inside the house. It is alleged that the accused asked Kusum P.W.16 to stay in the house of Shamrao-accused no.1 (her cousin father-in-law) who had his house in the neighbourhood. It is alleged that the accused persons took Ashok in the middle room and they latched the middle room from inside and started beating him. Ashok was crying and calling his mother to rescue. The prosecution case is that Kusum P.W.16 saw through the window that the accused Ramdas and Bhanudas were beating Ashok with sticks and the other three accused were giving kicks and fist blows. On seeing this, Kusum P.W.16 shouted loudly, but nobody came to rescue her husband Ashok. After sometime Ashok stopped shouting. On that, Kusum P.W.16 saw through the pipe of the window when she noticed that all accused persons were standing infront of her husband Ashok who was lying dead on the ground. It is also alleged that accused Shamrao, cousin father-in-law, threatened Kusum P.W.16 and asked her to keep silent. On that Kusum P.W.16 went to the house of Shamrao, cousin father-in-law and started crying. It is the prosecution case that thereafter, accused persons rolled up the dead body

of Ashok in a blanket. They kept the dead body in the bullockcart belonging to accused Shamrao and took the dead body to the burial place and burnt the dead body on the very same night. It is the prosecution case that on the next day when the uncle of Kusum P.W.16, Balasaheb Shinde, arrived at the scene, she told him that Ashok has not died natural death due to consumption of liquor as was informed to him, but has been killed. Thereafter, Kusum P.W.16 is stated to have gone with her uncle Balasaheb Shinde P.W.17 and later on went to the Wai Police Station where she lodged F.I.R. After the F.I.R. was registered, the Investigating Officer proceeded to the scene of offence alongwith Kusum P.W.16 and panchas. Kusum pointed out the spot. It is the prosecution case that she pointed out the blood stains on the brass vessel article No.1 and scraper article No.2, blood stained sample of earth and sample earth and two liquor bottles, articles Nos. 3 and 4 from the rear apartment were collected. It is stated that Kusum also pointed out where the stack was burnt. Accordingly, the Investigating Officer prepared panchanama of the same and attached one bundle of husk paddy. Thereafter, Investigating Officer, A.R.Jadhav P.W.18 arrested all the accused. It is stated that accused one by one produced blood stained

clothes from their house which were kept on the string, which came to be attached under panchanama Exh.29,31,32, 35 and 37. He thereafter, recorded statements of Sunanda Yevale, Mangala Gand, Sandip Arde, Gulabrao Yevale and Madhukar Pol & Others. It is stated that accused Shamrao pointed out ash and bones which were attached under panchanama Exh.39. Further, it is stated that accused Bhanudas produced stick before the panchas for which memorandum was prepared. The accused Bhanudas, it is stated that, led panchas to a heap of sugarcane and removed short sticks articles No.25 and 26 which were attached under panchanama. Accused Baburao produced bullock-cart which was attached under panchanama Exh.60. Accused Baburao went to the spot and pointed out the bullock-cart. Thereafter, bloodstained pieces of wooden plank of the said bullock-cart was attached under panchanama Exh.61. The Investigating officer P.W.18 further states that he caused to produce in all 14 witnesses before the Special Executive Magistrate for recording their statements under section 164 of Cr.P.C. After the investigation was completed, charge-sheet came to be filed. The case was committed to the Sessions Court at Satara.

3. During the trial, prosecution examined as

many as 18 witnesses. The accused pleaded not guilty and claimed to be tried. The accused tried to explain the bloodstains found on their clothes and on the floor and wall of the kitchen. According to them, wife of accused Baburao was cutting potatoes on the blade on the date of incident, she sustained injury while cutting potatoes and started bleeding profusely from her hand. She jerked her bleeding hand, on account of which the blood was strewn on the floor of the kitchen as also articles kept in kitchen and on the wall. According to the defence, Kusum P.W.16 had gone to Chandwadi about four days prior to the incident on 13th April, 2004. On the date of incident deceased Ashok consumed liquor and was found dead in his room. Accordingly, message was sent to P.W.16 whereafter she and persons from her parental house came on the next day Saturday morning. They stayed at Bhogaon till Sunday Morning and attended all the religious ceremonies which were performed after the death of Ashok. It is the case of the accused that Kusum P.W.16 filed false case against them at the instance of her paternal uncle Balkrishna Shinde P.W.17 in order to have share in partition. Accused examined Shivaji Laxman Yevale Exh.89 as defence witness.

4. The trial court, after conclusion of the trial, by the impugned Judgment and order has found accused No.1 to 5 guilty of the offence punishable under section 304(II) r.w 34 I.P.Code. The trial court has found that from the evidence on record it is not possible to take the view that accused had motive to murder Ashok. However, the evidence on record indicates that the accused wanted to teach lesson to Ashok but in the hit of passion they used excessive force without there being any intention to kill him. The trial court has taken a view that the act done by the accused was done with the knowledge that there is possibility of death due to assault on Ashok, but there was no intention to cause death or any injury likely to cause death. This conclusion is reached by the trial court on accepting the sole version of Kusum P.W.16. It is held that the version of P.W.16 to the effect that she had seen the incident atleast to the extent of accused persons dragging her husband Ashok inside the room and locking the door from inside will have to be accepted as trustworthy. The trial Court has rejected her version that she had the opportunity to see the persons assaulting her husband Ashok from the northern side of the house. Even So, the trial court has noted that the evidence of Kusum P.W.16 up to the

stage Ashok being dragged inside the house and the door was locked from inside by the accused and thereafter, Ashok was assaulted inside the room, coupled with the circumstances evident from the record that blood stains were strewn on the floor as well as wall and articles lying in kitchen. It proceeded to hold that it necessarily follows that Ashok was beaten mercilessly by the accused persons. It is on this basis the trial court proceeded to convict all the accused for offence punishable under section 304(II) r/w 34 I.P.C. and passed sentence for that offence only to pay fine of Rs.1,500/- each i.d. to suffer R.I. for three months. The trial Court also accepted the prosecution case that the accused persons were guilty of the offence under section 201 r/w 34 of the I.P.C. as they caused the evidence in relation to the crime to disappear from the scene including by disposing of the dead body of Ashok with undue haste on the very night. On that finding, the trial Court convicted the accused No.1 to 5 of offence punishable under section 201 r/w 34 of the I.P.C. and sentenced to suffer simple imprisonment till rising of the Court and to pay a fine of Rs.500/- each in default R.I for one month. The trial court also found the accused No.1 to 5 guilty of the offence under section 342 r/w 34 of the

I.P.C. for having wrongfully confined Ashok inside the house by locking door from inside and ordered that the accused shall undergo sentence by paying fine of Rs.300/- i.d. to suffer R.I. for 3 weeks. In the impugned judgment, the trial court further ordered that out of the fine amount sum of Rs.10,000/- to be paid to Kusum P.W.16.

5. This decision is the subject matter of challenge in the present appeals filed by the State for enhancement of sentence and cross-appeal filed by the accused persons for setting aside the order of conviction and sentence.

6. Mr.Mohite, advocate appearing for the accused has assailed the finding of guilt recorded by the court below on the argument that the trial court has essentially placed reliance on the evidence of Kusum P.W.16. In his submission, the said witness Kusum P.W.16 is neither a natural witness nor trustworthy. She has made several material improvements in her evidence. Besides, her evidence was not corroborated. As she is the only witness who has stood by the prosecution case, contends learned Counsel, her version will have to be considered cautiously. While appreciating her evidence, court

will have to keep in mind the defence version that the real reason for Kusum P.W. 16 to depose against the accused is on account of property dispute. She was claiming separate share in the joint property and was supported by her uncle P.W.17. Moreover, the prosecution has not examined police patil and no reason is forthcoming for that lapse, which is fatal to the prosecution case. So also the prosecution has not examined Chandrabhaga Bai who was another material witness available to the prosecution and non-examination of such material witness is fatal. It is then contended that even if the version of Kusum P.W.16 was to be accepted in part as has been done by the trial court, even then, it will be of no assistance to the prosecution to prove the guilt against the respective accused for offence under section 304(II) r/w 34 of the I.P.C. There is no evidence whatsoever as to the role played by each of the accused. No overt act, after locking of the door from inside is attributed. There is no evidence as to what really transpired inside the room and who was responsible for giving excessive beating to Ashok, who succumbed to such injury. It is then contended that even the conclusion reached by the trial court with regard to the other offences under section 342 and 201 r/w 34 of the I.P.C. cannot be sustained.

There is not even remote evidence of dead body having been secretly disposed of or with undue haste as has been found by the trial court. In any case, the sentence imposed by the trial court is sufficient for the reasons recorded by the trial court which is just and appropriate. It is submitted that the court may take lenient view in the facts of the present case, as the alleged offence has taken place on 13th April, 1984 and over 20 years have already elapsed. Two accused have reached more than 70 years of age. One of the accused is already dead. Taking over all view of the matter, contends the counsel for the accused, this court should be slow in enhancing the quantum of sentence imposed by the trial court.

7. The learned APP on the other hand has supported the findings reached by the trial court and was at pains to contend that the sentence imposed by the trial court is very nominal and has resulted in miscrriage of justice.

8. Having considered the rival submissions and going through the records of the case, the first question, I think, which needs to be addressed is, whether the evidence of Kusum P.W.16 will have to be accepted as a whole or otherwise. In other words,

whether the prosecution witness Kusum P.W. 16 can be said to be a natural and trustworthy witness or whether her entire or part version should be discarded. From the evidence which has come on record, it is more than clear that Kusum P.W. 16 was present at the scene of offence at the relevant time. This finding reached by the trial court is unexceptionable. Kusum P.W.16, in her evidence has deposed about the circumstances in which the incident occurred. She has stated that her husband Ashok after having food had gone to Shegaon, Pandewadi in the afternoon alongwith their son Vijay and Sunanda's son Jitendra to deliver shevga to his sister Mangala. He went on foot to Pandewadi. At the relevant time her son Vijay was one year old and Jitendra was four years old. When Ashok returned back at about 4.30 p.m., Sunanda started abusing him as to why he had taken her son Jitendra to Pandewadi. She then deposed that Ashok was upset by the behaviour of Sunanda. On account of which he demanded match box from her, to enable him to set the stack lying in the court yard on fire. When Kusum did not respond, Ashok himself brought the match box and set the stack lying in the court yard on fire. At that time, Sunanda, Chandrabaga, Accused Shamrao, Accused Keshav and Accused Baburao alongwith 25 to 30 villagers came

on the scene and extinguished the fire. She has then stated that Shamrao A-1, Baburao A-2, Keshav A-4 caught hold of Ashok and started scolding him as to whether he wanted to kill them and set the house on fire. She then deposes that her father-in-law, mother-in-law and Keshav pacified Ashok. The matter did not end at that but escalated on the arrival of Bhanudas A-5 and Ramdas A-3 who came from Wai. They arrived at the scene at around 6.30 p.m. They also shouted at Ashok and started giving him fist blows. She then deposes that thereafter all the accused took Ashok dragging to the kitchen room and chained the door of the kitchen from inside. So far as this version of Kusum is concerned, the same has been accepted by the trial Court and in my view, justly. The defence has cross-examined Kusum. Only suggestion is given, without any tangible evidence to show that Kusum was not present at the scene but elsewhere. In my opinion, from the tenor of cross-examination, it is possible to take the view that the presence of Kusum at the relevant time at the scene of offence is not in doubt. To illustrate this point, it will be useful to refer to paragraph-11 which is part of the cross-examination, where the witness has stated that she was standing in the Eastern courtyard when her husband went to the

rear courtyard of Shamrao. She then spoke about how she reacted when the stack in the court yard was set on fire. She has further deposed that at the relevant time, she was sitting in the courtyard alongwith her son when Bhanudas came from Wai and made enquiry with Ashok. She has answered the questions put in the cross-examination as follows:

"It is true that my husband was abusing accused Bhanudas and Ramdas when they were assaulting my husband Ashok ...."

She has then deposed that it is true that accused made her to sit in the house of Shamrao-cousin father-in-law and that the scene of offence was not visible from the house of accused Shamrao. The accused made her sit in house of the accused facing to West and also on the night of Friday. Suffice it to observe that from the tenor of cross-examination the presence of Kusum P.W.16 at the scene of offence at the relevant time is not seriously questioned. I am therefore, in agreement with the conclusion reached by the Trial Court that the presence of Kusum P.W.16 on the scene of offence at the relevant time will have to be accepted.

9. Once the presence of Kusum P.W.16 is accepted, the next question that arises for our consideration is whether the version of P.W.16 will have to be rejected as untrustworthy as a whole or can be accepted in part. The trial Court after appreciating her version has found that her presence on the scene of offence at the relevant time appears to be natural. The trial court has also accepted her version up to the events that unfolded of Ashok being dragged inside the house by all the accused and locking of the door from inside by the accused and of continued beating. I am in agreement with the said opinion recorded by the trial court. It is not possible to accept the argument, as is canvassed on behalf of the accused that, even that version of Kusum P.W. 16 will have to be discarded. Indeed, the evidence of Kusum P.W.16 is the prime evidence available on record to proceed against the accused, that however will make no difference to the ultimate conclusion to be reached, as noted by the trial Court. As Kusum P.W.16 is the only eye witness, her version will have to be examined by the Court cautiously. This is precisely what the trial Court has done. I see no reason to depart from the approach of the trial Court of accepting the evidence of Kusum P.W.16 upto the stage of dragging of her

husband Ashok by all the accused inside the house and locking of the door from inside whereafter Ashok kept on screaming for help on being mercilessly beaten till became silent and after sometime the accused persons came out of the room when Ashok was found lying on the floor. I am also in agreement with the finding recorded by the trial Court that, even if that version of Kusum P.W.16 was to be accepted, her claim of having seen the actual assault by the accused on Ashok from the northern window in the northern wall will have to be rejected. Because, in the cross-examination, in paragraph -11, she has admitted that the scene of offence was not visible from the house of Accused Shamarao. Her case in the evidence is that she was made to sit in the house of accused Shamrao when Ashok was dragged inside the room by the Accused. In paragraph-12 she has admitted that it is true that police asked her where she was sitting and told her that scene of offence was not visible from the house of accused Shamrao. Her supplementary statement was recorded after 10 days from lodging of F.I.R., wherein she has mentioned that she was not in the house of accused Shamrao when her husband was beaten, but she was in the northern cattle shed. Interestingly, in the said paragraph-12 she has admitted that the scene of

offence was not visible even from the northern cattle shed of the accused Shamrao. Thus understood, the trial Court has rightly rejected her claim that she has had the opportunity to see the accused persons assaulting her husband Ashok. I am in agreement with the said finding reached by the trial Court.

10. The next question is whether the entire prosecution case would fail if the other part of the evidence of Kusum P.W.16 was to be discarded. In my opinion, this issue will have to be answered against the accused and in favour of the prosecution. For, the trial Court has rightly proceeded to record the finding that the prosecution has proved the factum of commission of offence. The trial court not only adverted to the evidence of Kusum P.W.16 to reach at this conclusion, but also adverted to the evidence of P.W. 2 who has established strong circumstances of commission of offence. Blood stains were found on the southern wall of the kitchen and brass vessels and scraper article Nos. 1 and 2 and also on the floor and southern wall of the kitchen having been washed with cow-dunk recently to erase the blood stains. The trial Court has also taken into account the circumstance of false message being given to the relative of Kusum P.W.16 that Ashok died due to

consumption of alcohol on the next day of the incident and before that the dead body of Ashok came to be disposed of. The evidence of P.W.17 supports the prosecution case that when he arrived on the scene on Sunday on receiving such message, Kusum P.W.16 went running to him and immediately disclosed that Ashok has not died natural death due to excessive consumption of alcohol but has been killed. Viewed thus, merely because P.W.16 is the sole eye witness to the incident examined by the prosecution, will not affect the prosecution case as has been established and particularly when the portion of evidence of P.W.16 has remained unshaken. Taking totality of the circumstances, as has been rightly found by the trial court, the prosecution has succeeded in establishing that offence took place on the scene of offence on the relevant day and the involvement of Accused is also established.

11. On considering evidence on record I have no hesitation in upholding the findings reached by the trial Court that it is not a case where provisions of Section 302 I.P.C.can be invoked. There is no evidence of any motive to kill Ashok. The evidence at best would suggest that the accused had knowledge of the consequence of excessive assault for which

reason provision of Section 304(II) will be attracted. Even if this finding was to be upheld, the question is whether it is possible to take the view that the accused are liable to be convicted on account of Section 304(II) read with 34 of the I.P.Code. That conclusion of the trial court, in my opinion, will require reconsideration. I have already confirmed the finding of the trial Court that Kusum P.W.16 has had no occasion to see the actual event of assault by the accused inside the room. There is no evidence on record about the overt act of each of the accused inside the closed room. It is not possible to draw inference with certain degree of assurance about the culpability of each of the accused. Much less there is no legal evidence on record as to what happened inside the room after it was closed from inside except that the deceased was shouting and screaming for help of his mother. At best it can be inferred that he was being mercilessly beaten. However, it is not known whether all the accused assaulted the deceased together or whether only one of them or more amongst them over reacted to the situation on account of which the deceased received fatal injury and succumbed to that injury. It is also not possible to infer with certain degree of assurance that all the accused had common

intention to kill the deceased or shared the same. If only one of them had assaulted and the others were passive or may be have failed to pacify the assailant (killer) or that their intervention was futile, nothing of this can be said with certainty. The recovery of clothes and sticks at the instance of the accused has rightly been held to be of no consequence by the trial court. In this backdrop, the only course open to this court is to give benefit of doubt to all the accused even while upholding the finding of the trial Court that the fact of commission of offence has been established by the prosecution. Counsel for the accused has justly placed reliance on the exposition of the Apex Court in the case of **Mithu Singh V/s.State of Panjab reported in (2001) 4 SCC 193** to buttress the view that I have taken as referred to above. In that case, two accused were seen to have arrived on the scene of offence with fire arms in their possession. One of the accused shot the victim. Soon thereafter, both the accused fled from the scene. Although both the accused were holding fire arms and fled after one of them shot, the Apex Court took the view that an inference as to common intention shared by them shall not be readily drawn. That culpable liability will arise only if such inference can be drawn with certain degree of

assurance. In so far as the appellant before the Supreme Court, it was observed that at the worst the accused knew that co-accused has been armed with pistol and that the knowledge of previous enmity existing between the co-accused and the deceased can also be attributed to him, but even that is not enough to infer that the appellant had common intention with the co-accused and had visited the house of the deceased with intention of causing her death. Reliance is then placed on another decision of the Apex Court in the case of **Kalachand Bhowmik and Anr. V/s. State of Tripura reported in 2001 S.C.C.(Cri.)1585.** Even in this case, the appellant before the Apex Court were named as accused alongwith several other accused. However, specific role attributed to the appellant before the Supreme Court was that they inflicted blows with lathi and nothing else. The evidence on record however, showed that all the injuries were ante-mortem injuries noted by the doctor who conducted the autopsy. However, there was was not even single injury mentioned in the said report which can be indirectly attributed to a blow with lathi. In the backdrop of this kind of evidence, the Apex court took the view that mere fact that the accused were included in the crowd which followed the deceased, is not enough to credit the

appellants with the common intention sharing with the real killers. The Apex Court observed that since there was no reliable evidence to show that the appellants inflicted lathi blows on the deceased, it was not possible to infer sharing of common intention. Reliance is also placed on another decision of the Apex Court in the case of **Cherlopalli Cheliminabi Saheb & Anr. V/s.State of A.P.((2003) 2 S.C.C. 571).** In that case, the court noted that the fight had started suddenly without premeditation between the two ladies and others joined in and somebody stabbed the deceased. Even in this case, the Apex Court has taken the view that in the absence of any material to show that there was any common intention, it will not be possible to attract Section 34 of the I.P.Code. Counsel for the accused has lastly relied on the decision of the Division Bench of our High Court in the case of **Ravindra Kondiba Pol V/s State of Maharashtra (1997(2) Bom. C.R.Page 64).** Even in this case, the incident took place on the spur of moment preceded by altercation between the deceased and four accused persons. During the course of such altercation one of the accused person got hammer and inflicted three blows with the same on the head of the deceased. The Court went on to observe that in such fact situation, section 34 of the

I.P.Code cannot be invoked. In as much as, three amongst four accused persons were merely present on the place of incident and murder of the deceased was not in furtherance of their common intention but was the individual act of the fourth accused who got something in his hand on the spur of the moment and inflicted blows with it on the head of the deceased. Applying the abovesaid principles to the facts of the present case, I have no hesitation in taking the view that it is not possible to infer with certain degree of assurance that all the accused participated in merciless assault of Ashok inside the locked room or that each of them assaulted Ashok with common intention or causing such injury which may result in his death. In this peculiar situation, all the accused will have to be given benefit of doubt. That however, does not mean that the prosecution has failed to establish the commission of offence on the relevant date. Whereas, the evidence on record clearly establishes the position that all the accused persons dragged Ashok inside the room and locked the room from inside whereafter, Ashok was heard screaming for help which presupposes that he was beaten mercilessly. The fact that he has been beaten mercilessly is re-inforced from the circumstances as has been rightly noted by the trial Court relying on

the evidence of P.W.2 that blood stains were found on the southern wall of kitchen, brass vessel article-1 and scraper article-2. Besides, the floor of the kitchen as well as southern wall of the kitchen was found to have been recently washed with cow-dunk, so as to erase the blood stains thereon. Besides, it has been rightly noticed by the trial court that the dead body of Ashok was disposed of in haste on the same night. Counsel for the accused criticized this finding on the argument that there was absolutely no evidence on record to take the view that the dead body was hurriedly taken to the river side and was burnt immediately or with undue haste. The fact that dead body was burnt on the same evening has been established in evidence. Indeed, the dead body has been burnt in the burial place but no intimation was given to the local police though it was not a natural death of Ashok, which was expected even if it was a case of death due excessive drinking. Be that as it may, as the accused are entitled for benefit of doubt in so far as offence under sections 304 (II) r/w 34 of the I.P.Code, to that extent the appeal preferred by the accused will succeed and the order of conviction and sentence in that behalf will have to be set aside.

12. That however, does not mean that the accused would succeed in toto. The accused have faced trial for offence under section 342 r/w 34 of the I.P.Code. In so far as offence under section 342 is concerned, is one of wrongful confinement of any person. The prosecution case is that Ashok was dragged by all the accused and was taken inside the room and thereafter, room was locked from inside. This fact has been established from the evidence of Kusum P.W.16. Once that fact has been established the finding of guilt as recorded by the trial court in relation to the offence under section 342 r/w 34 of the I.P.Code will have to be upheld. In so far as charge of wrongful confinement of Ashok is concerned, the prosecution case as has been established and accepted by the trial court; which finding is upheld in this order establishes that Ashok was dragged by "all the accused" and taken inside the kitchen room. The kitchen room was then bolted from inside. The act of all the accused, of dragging Ashok inside the room and bolting the kitchen from inside, establishes common intention in so far as commission of this offence is concerned. To that extent, the Judgment of the trial court recording finding of guilt will have to be accepted. For this offence the trial Court has imposed sentence requiring the accused to

only pay fine of Rs.300/-each i.d. to suffer R.I. for 3(three) weeks. I have no hesitation in taking the view that this sentence is inadequate. The sentence provided by the Code for this offence can extend to imprisonment for one year, or with fine to the extent of Rs.1,000/-, or with both. The trial court has not provided any imprisonment but only fine of Rs.300/-. Taking into account totality of the circumstances, even while accepting the argument of the accused that the court should take lenient view of the matter, in so far as the sentence imposed in relation to the offence under section 342 r/w 34 of the I.P.C is concerned, in my opinion, the same will have to be enhanced atleast to fine of Rs.1,000/- each i.d. to suffer R.I. for 3 months.

13. The next question is whether the finding of guilt recorded in respect of offence under section 201 r/w 34 of the I.P.C. can be sustained. The trial court has noted that there was clear attempt on the part of all the accused to dispose of the dead body of Ashok immediately after the incident on the same night. No intimation was given to the Local Police although the death of Ashok was not a natural death. Even if it was a case of death due to excessive consumption of alcohol that was also

required to be reported as it is not a natural death. Besides, with intention to screening the offender from legal punishment, the evidence which was present on the scene of offence was caused to disappear. The floor of the kitchen was strewn with blood, as was the southern wall of the kitchen. To cover up that evidence, the floor as well as the southern wall was washed by cow-dunk. Besides, the accused sent message about death of Ashok to the relatives of Kusum P.W.16 only the next morning after having ensured that the evidence of commission of offence has been made to disappear. The message given to the relative of Kusum, P.W.16 was that Ashok died on account of excessive consumption of alcohol, which message was obviously false. On the basis of evidence on record, the trial court has rightly recorded finding of guilt against the accused in so far as offence punishable under section 201 r/w 34 of the I.P.Code. That will have to be upheld.

14. The next question is about the adequacy of sentence imposed by the trial court in relation to this offence. The trial court has ordered that the accused to suffer simple imprisonment till rising of the court and to pay fine of Rs.500/- each i.d. to suffer R.I. for one month. From the plain language

of section 201, it is seen that the offence which is punishable with imprisonment for life or with imprisonment which may extend to 10 years, which is the clause attracted in the present case, is punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable for fine. Thus understood, the punishment of simple imprisonment till rising of the court and fine of Rs.500/- is unacceptable. The trial court was impressed by the fact that the accused were very closely related to the deceased by blood. Accused Baburao was his father while Accused Keshav and Bhanudas were real brothers. They have already lost Ashok. On that reasoning the trial Court decided to take liberal view of the matter. As mentioned earlier, the sentence imposed by the trial court in my view is insufficient. However, accepting the submission canvassed on behalf of the accused that the offence in question had occurred more than 20 years back and that two of the accused have already crossed over 70 years of age and one of the accused is already dead, in my opinion, without enhancing the sentence of imprisonment awarded by the trial court, the accused should be made liable to pay enhanced fine of Rs.4,000/- each.

15. Accordingly, both the appeals partly succeed on the following terms:

(i) The order of conviction and sentence in respect of the offence punishable under section 304(II) r/w 34 of the I.P.C. as against all the accused is set aside and are given benefit of doubt.

(ii) The accused are convicted of the offence punishable under section 201 r/w 34 of the I.P.Code and sentenced to suffer S.I. till rising of the court and to pay fine of Rs.4,000/-each i.d. to suffer R.I. for 12 months.

(iii) The accused are further convicted for the offence punishable under section 342 r/w 34 of the I.P.Code and are sentenced to pay fine of Rs.1,000/- each i.d. R.I. for 3 months.

(iv) Out of the fine amount, sum of Rs.20,000/- be made over to the widow i.e. Kusum(P.W.16), wife of Ashok.

(v) Muddemal articles referred to in the order of the trial court which is impugned in these appeals, be disposed of on the terms mentioned by the trial court.

(vi) Fine amount to be paid within 12 weeks.